

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 584
89TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary, February 18, 1998, with recommendation that the Senate Committee Substitute do pass.
Senate Committee Substitute for Senate Bill No. 584, adopted March 11, 1998.
Taken up for Perfection March 11, 1998. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

S2569.02P

AN ACT

To repeal sections 287.610 and 287.615, RSMo 1994, and section 286.005, RSMo Supp. 1997, relating to the department of labor and industrial relations, and to enact in lieu thereof four new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 287.610 and 287.615, RSMo 1994, and section 286.005, RSMo Supp. 1997, are repealed and four new sections enacted in lieu thereof, to be known as sections 286.005, 286.610, 287.615 and 1, to read as follows:

286.005. 1. There is hereby created a "Department of Labor and Industrial Relations" to be headed by a labor and industrial relations commission as provided by section 49, article IV, Constitution of Missouri. All the powers, duties and functions of the industrial commission are transferred by type I transfer to the labor and industrial relations commission and the industrial commission is abolished. The commission shall nominate and the governor shall appoint, with the advice and consent of the senate, the director of the department to be the chief administrative officer of the department. Members of the industrial commission on May 2, 1974, shall become members of the commission and the terms of the commission members shall be the same as provided by law for the industrial commission. Individuals appointed as members of the industrial commission shall serve the remainder of the term to which they were appointed as members of the commission. The members of the commission shall receive an annual salary [of seventy-two thousand seven hundred thirty-five dollars plus any salary adjustment provided pursuant to

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

section 105.005, RSMo,] **equal to ninety percent of the rate at which a circuit judge is compensated** payable out of the state treasury. The board of rehabilitation is abolished as hereinafter set out and on May 2, 1974, no compensation shall be paid to any person as a member of the board of rehabilitation, other provisions of the law notwithstanding. The director of the department shall appoint other division heads in the department. For the purposes of subsections 6, 7, 8 and 9 of section 1 of the reorganization act of 1974, the director of the department shall be construed as the head of the department of labor and industrial relations.

2. All powers, duties, and functions vested by law in the division of employment security, chapter 288, RSMo, and others, are transferred by type II transfer to the department.

3. All powers, duties, and functions vested by law in the division of workers' compensation, chapter 287, RSMo, and others, are transferred by type II transfer to the department.

4. All the powers, duties, and functions of the board of rehabilitation, chapter 287, RSMo, and others, are transferred by type I transfer to the division of workers' compensation of the department and the board of rehabilitation is abolished.

5. All powers, duties and functions vested by law in the division of industrial inspections and the division of mine inspections, chapters 286, 290, 291, 292, 293, 294 and 444, RSMo, which were previously transferred by type I transfer to the inspection section of the department, are transferred to the division of labor standards of the department. Employees of the division performing duties related to the mine safety and health act and the occupational safety health act shall be selected in accord with chapter 36, RSMo.

6. All the powers, duties, and functions vested by law in the state board of mediation under chapter 295, RSMo, and others, are transferred by type II transfer to the department.

7. All employees of the division of employment security shall be selected in accord with chapter 36, RSMo.

8. The Missouri commission on human rights, and all the authority, powers, duties, functions, records, personnel, property, matters pending and other pertinent vestiges thereof vested in the Missouri commission on human rights under chapters 213, 296, 314, and others, RSMo, are transferred by type III transfer to the department. Members of the Missouri commission on human rights shall be nominated by the director for appointment by the governor, by and with the advice and consent of the senate.

9. The department shall act as the administrative entity for the governor's council on disability. The federal and state funds necessary for the administration and implementation of the programs and services provided by the governor's council on disability shall be appropriated through the department.

287.610. 1. The division may appoint such number of administrative law judges as it may find necessary, but not exceeding [twenty] **thirty** in number, who shall be duly licensed lawyers under the laws of this state. **The division may increase the number of administrative law**

judges up to the maximum number authorized by this section in the following manner: two administrative law judges shall be added in the year 1999; thereafter the department shall annually review the need to add administrative law judges and may add up to two per year up to the total amount authorized by this section subject to appropriation demonstrated need for an increase in the number of administrative law judges. The review performance by the department shall consist of an evaluation of the administrative law judge's conduct, performance and productivity. After such performance review by the department, any administrative law judge who has received an unsatisfactory evaluation by the department in any of the three categories of conduct, performance or productivity, may appeal the performance review to the administrative law judge review committee. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. Any administrative law judge may be discharged or removed only by the governor, based upon review by the department, pursuant to an evaluation by the administrative law judge review committee of the judge's conduct, performance and productivity.

2. The division shall require and perform evaluations of an administrative law judge, associate administrative law judge and legal advisor's conduct, performance and productivity based upon written standards established by rule by the division. The division shall adopt the rule on or before January 1, 1999:

(1) After an evaluation by the division, any administrative law judge, associate administrative law judge or legal advisor who has received an unsatisfactory evaluation in any of the three categories of conduct, performance or productivity, may appeal the evaluation to the administrative law judge review committee;

(2) The division director may refer an unsatisfactory evaluation of any administrative law judge, associate administrative law judge or legal advisor to the administrative law judge review committee;

(3) When a written, signed complaint is made against an administrative law judge, associate administrative law judge or legal advisor, it shall be referred to the director of the division for a determination of merit. When the director finds the complaint has merit, it shall be referred to the administrative law judge review committee for investigation and review.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority of this chapter, shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after the effective date of this act. All rulemaking authority delegated prior to the effective date of this act is of no force and effect and repealed as of the effective date of this act, however nothing in this act shall be interpreted to repeal or affect the validity of any rule adopted and

promulgated prior to the effective date of this act. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028 to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in this act shall affect the validity of any rule adopted and promulgated prior to the effective date of this act.

4. The administrative law judge review committee shall be composed of one administrative law judge, who shall act as a peer judge on the committee and shall be domiciled in a division office other than that of the judge being reviewed, one employee representative and one employer representative, neither of whom shall have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. The employee representative and employer representative shall have a working knowledge of workers' compensation. The employee and employer representative shall serve for four-year staggered terms and they shall be appointed by the governor. The initial employee representative shall be appointed for a two-year term. The administrative law judge who acts as a peer judge shall be appointed by the chairman of the labor and industrial relations commission [and shall not serve on any two consecutive reviews conducted by the committee]. Chairmanship of the committee shall rotate between the employee representative and the employer representative every other year. Staffing for the administrative review committee shall be provided, as needed, by the director of the department of labor and industrial relations and shall be funded from the workers' compensation fund. Upon a signed written letter of complaint, the administrative law judge review committee may institute a review, without the direction of the director of the department, of an administrative law judge and submit its findings to the governor, **however nothing in this section shall be construed to prevent the department director from requesting the administrative law judge review committee to institute a review of any administrative law judge.**

[2.] 5. The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction whatsoever upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award; however, the labor and industrial relations commission may remand any decision of an administrative law judge for a more complete finding of facts. With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any

original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and industrial relations commission, and shall be subject to review as provided by section 287.480.

[3.] 6. Any of the administrative law judges employed pursuant to this section may be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper administration of this chapter.

[4.] 7. All administrative law judges and legal advisors shall be required to participate in, on a continuing basis, specific training that shall pertain to those elements of knowledge and procedure necessary for the efficient and competent performance of the administrative law judges' and legal advisors' required duties and responsibilities. Such training requirements shall be established by the division subject to appropriations and shall include training in medical determinations and records, mediation and legal issues pertaining to workers' compensation adjudication. Such training may be credited toward any continuing legal education requirements.

287.615. 1. The division may appoint or employ such persons as may be necessary to the proper administration of this chapter. All salaries to clerical employees shall be fixed by the division and approved by the labor and industrial relations commission. The annual salary of each legal advisor, administrative law judge, administrative law judge in charge, and chief legal advisor shall be as follows:

(1) For each legal advisor, [forty-one thousand dollars] **compensation of at least forty-one thousand dollars but not more than eighty percent of the rate at which an associate circuit judge is compensated;**

(2) For each chief legal advisor, [forty-three thousand dollars] **compensation at the same rate as a legal advisor plus two thousand dollars;**

(3) For each administrative law judge, [forty-eight thousand dollars] **compensation at ninety percent of the rate at which an associate circuit judge is compensated;**

(4) For each administrative law judge in charge, [fifty-one thousand dollars] **compensation at the same rate as an administrative law judge plus five thousand dollars.**

2. [In addition to the compensation specified in subsection 1 of this section, such employees shall receive any salary adjustment provided pursuant to section 105.005, RSMo.

3.] The salary of the director of the division of workers' compensation shall be set by the director of the department of labor and industrial relations[, but shall not be less than the salary

plus two thousand dollars of an administrative law judge in charge]. The appointees in each classification shall be selected as nearly as practicable in equal numbers from each of the two political parties casting the highest and the next highest number of votes for governor in the last preceding state election.

Section 1. The salaries set in sections 286.005, 286.610 and 287.615 shall be subject to appropriations.

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